



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION
861 SILVER LAKE BLVD.
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE:
FAX:

(302) 736-7500
(302) 739-4849

August 5, 2014

MEMORANDUM

TO: The Chair and Members of the Commission

FROM: Malika Davis, Public Utility Analyst

SUBJECT: IN THE MATTER OF THE APPLICATION OF TIBIRI ENERGY GROUP, LLC FOR A CERTIFICATE TO PROVIDE ELECTRIC SUPPLY SERVICES WITHIN THE STATE OF DELAWARE (FILED DECEMBER 16, 2013 AND AMENDED JANUARY 2, 2014) - PSC DOCKET No. 13-501

Background

On June 2, 2014, Tibiri Energy Group, LLC (the "Company" or "Tibiri") filed an application (the "Application") with the Delaware Public Service Commission ("Commission") for an Electric Supplier Certificate ("ESC") to act as a Broker in the State of Delaware pursuant to §1012 of the Electric Utility Restructuring Act of 1999, 26 *Del. C.* §1001 - §1020 (the "Act") and 26 *Del. Admin. C.* §3001, the Commission's Rules for Certification and Regulation of Electric Suppliers (the "Supplier Rules").¹

Application

The filing submitted on December 16, 2013 did not contain all the information that is required per the Supplier Rules. It did include a confidential business plan marked "DRAFT". The Staff requested the Company file additional documentation in a letter dated December 23, 2013. The letter requested that the Company provide a toll-free telephone number of customer service department as required by section 2.1.1.8.4 of the Supplier Rules and reminded the company that section 2.1.1.4 provides that Brokers must only provide service in conjunction with Electric Suppliers that have been certified by the Commission and are in compliance with PJM's requirements. The letter included information about requesting a waiver of the toll-free telephone number as permitted by section 2.5 of the Supplier Rules. Staff received the Company's response on January 2, 2014 which included an amended application (the "Amended Application"). The Amended Application also included a confidential business plan. On January 6, 2014, Staff requested that the Company provide proof of authority to do business as required by section 2.1.1.1 of the Supplier Rules. This request was mistakenly left out of the December 23rd letter to the Company. On February 18, 2014, Staff received the requested information. On March 19, 2014, Staff requested additional information from the Company, including a verification of all the information provided by the Company as required by section 2.1.1.6 of the Supplier Rules and additional indicia of financial capability as provided for in section 2.1.1.5.1 of the Supplier Rules. Staff received the Company's response on April 21, 2014. On May 27, 2014, Staff requested additional information from the Company and the Company response was received on July 3, 2014. On July 9, 2014, Staff again requested verification of information, as the one previously provided did not cover all the information submitted by the Company. Staff received the verification of information on July 22, 2014.

¹ Unless otherwise noted, all references to capitalized terms are set forth in the Act and/or the Supplier Rules.

Review and Analysis

Authority to do Business in Delaware

The Company is a limited liability company formed under the laws of Delaware and has provided proof issued by the Delaware Secretary of State that it is legally authorized and qualified to do business in the State of Delaware. The Company submitted a Certificate of Good Standing issued on January 14, 2014 by the Delaware Secretary of State. The Application filed on December 16th included the Company's State of Delaware Business License Number. The Company submitted a temporary Business License issued by the Delaware Division of Revenue in the February 18th supplemental information. Staff confirmed that a Business License has been issued to Company for the period of January 2014 – December 2014.

Resident Agent

The Company lists itself as the Resident Agent; the Company is located in Middletown, DE.

Compliance with Regional Requirements

The Company affirmed in its Amended Application that it will only present electricity supply contracts to its customers from Marketers/Electric Suppliers who are in compliance with all applicable PJM requirements. The Company specifically stated that it intended to work with AEP Energy Inc., which has already received an ESC from the Commission.

Financial, Operational, Managerial and Technical Ability

The Company provided financial information for Mr. Moussa I. Kourouma as indicia of financial capability under Section 2.1.1.5.1 of the Supplier Rules. The March 19th letter from Staff requested financial information for the Company. The proof of financial ability for the Company was included in the April 21st response from the Company.

The Company anticipates acting as a Broker for Residential, Small Commercial, commercial and industrial customers for the sale or purchase of electricity throughout the State of Delaware. The Company's Application stated that it was not presently licensed in any other states and that it intended to seek approval to operate in Maryland, New Jersey, Pennsylvania and New York. The Company was licensed to serve as a broker by the Maryland Public Service Commission on May 14, 2014. The Application states that the Company has not been denied approval nor had its authority revoked by any state commission.

Both the Application and the Amended Application included a summary of the key operating personnel of the Company. The Application lists Mr. Kourouma as the key personnel responsible for Delaware operations and as the Managing Director. He has sixteen years of experience in the wholesale and retail energy market. Since 2009 he has been employed by the City of Baltimore as an energy efficiency project manager. From 1997-2001, Mr. Kourouma was employed by General Public Utility and from 2002 to 2007 he was employed by Delmarva/Conectiv Energy Supply, Inc. He has degrees in electric engineering from Drexel University and the University of Conakry, Guinea. Mr. Kourouma also has a M.S. from the University of Pennsylvania and is pursuing an advanced degree in Public Policy and Administration at the University of Delaware.

Surety Bond

The Company did not post a surety bond because it is a Broker only and there are no service agreements between the Company and any Delaware Electric Distribution Company. The Company will not collect any fees or deposits from any of its customers for any of its brokerage services.

Verification of Application

On July 22, 2014, Staff received a notarized verification for all of the information submitted by the Company. The Company had previously provided their LLC Operating Agreement to Staff's attorney.

Consent to Jurisdiction

The Company consents to the jurisdiction of the Delaware courts.

Toll-Free Telephone Number

The Company provided a Delaware telephone number in the Amended Application and requested a waiver of the toll-free telephone number. Section 2.5 of the Supplier Rules provides for a Waiver of Certification Requirements. Staff would support the waiver because the Company is seeking an ESC to operate as a Broker and will not have contracts with Retail Electric Customers to provide Electric Supply Service. Customers will be able to contact their Electric Supplier using a toll-free telephone number as required by the Supplier Rules.

Contracts

The Company also did not provide any sample contracts for Residential or Small Commercial Customers because it is a Broker only and does not and will not have contracts with Retail Electric Customers to provide Electric Supply Service.

Statement of Criminal Activity

The Application states that Mr. Kourouma has not been charged or convicted of any criminal activity. The Company states that it has no Affiliated Interests. An internet review of the Company and its principal did not reveal any issues.

Fraudulent, Misleading, Overlooked or Unclear Statements

The business plan included in the Amended Application listed Ibrahima Kalle as the Managing Director, while the Application listed Moussa Kourouma with the same title and credentials. On February 18, 2014, Staff asked the Company to clarify the relationship between Mr. Kourouma and Mr. Kalle. On February 19th, the Company provided a response stating that Mr. Kourouma had recently changed his name to Mr. Kalle and included the order from the Delaware Court of Common Pleas in New Castle County dated December 16, 2013. A copy of the Social Security Card and Driver's license for Mr. Kalle was also provided. This February 19th submission was marked as confidential by the Company. Staff believes the name change was an overlooked statement.

The business plan included in the December 16th Application and the Amended Application received on January 2nd included an organization chart which listed an attorney for the Company. Staff's Attorney contacted that Attorney and was told that no relationship existed between that law firm and the Company. Staff believes the listing of that Attorney to be a misleading statement.

Staff conducted an internet review of the Company and its key operating personnel. Staff discovered a Federal Energy Regulatory Commission ("FERC") docket involving Mr. Kourouma. In FERC Docket No. IN11-2-000 Moussa I. Kourouma d/b/a Quntum Energy LLC, 136 FERC ¶16,157, Mr. Kourouma was found to be in violation of FERC's regulations prohibiting the submission of false or misleading information or the omission of material information in any communication with FERC or a FERC-approved regional transmission organization. The FERC order, issued July 16, 2011, shows that he was fined \$50,000. Mr. Kourouma was directed to pay \$5,000 within 90 days of the order being issued and to pay \$9,000 one year after the issuance of the order and each year after. The penalty could also be paid in one lump sum within 90 days. The FERC order showed that Quntum Energy, LLC ("Quantum") had been dissolved and that Mr. Kourouma had started another energy company, Tibiri. Mr. Kourouma filed a petition for review of the FERC order with the United States Court of Appeals for the District of Columbia. The petition was argued on December 13, 2012 and decided on July 23, 2013. The petition for review as denied. The May 27th request from Staff asked the Company to 1) explain the Company's relationship to Quntum, 2) provide the status of the payment of the \$50,000 penalty to FERC, and 3) state whether PJM took any actions against the Company or Quntum. The Company responded in its July 3rd submission that 1) Tibiri has no relationship with Quntum and that Quntum was closed and does not exist, 2) no payment has been made to FERC as Mr. Kourouma did not agree with the decision, and 3) PJM did not take any actions against Quantum. Staff was unable to find any actions taken against the Company and/or Quantum by PJM. Staff was also unable to find any actions taken against the Company and/or Mr. Kourouma for failure to pay the \$50,000 penalty. While disclosure of the FERC action is not required by the Supplier Rules, Staff believes the failure of the Company to disclose this information can be seen as an overlooked statement.

Legal Review

On August 4, 2014, following Staff's completed review and analysis of the Application, Staff forwarded its final analysis to the assigned Attorney to confirm that all required documentation requested and received from the Company was in compliance with applicable provisions of Title 26 and the Supplier Rules. Staff also communicated with the attorney during the review and analysis process.

Staff Recommendation

Based on Staff's review and analysis of the Application, Amended Application, and supplemental information submitted, the Company has provided all information required by Act and the Supplier Rules. However, Staff does not believe the Company has demonstrated substantial evidence of capability to render service based on the Company's financial, operational, managerial and technical abilities. Staff finds that the FERC docket shows that Mr. Kourouma does not have the managerial abilities to operate as a Broker in Delaware consistent with good business practices. Therefore, Staff recommends the Commission deny the Application.